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Patent Application

Inventor(s):   Brusilovsky et al.

Atty. Ref.:	Brusilovsky 6-7-2 LUC-480	Examiner:	Kerri M. Rose
Serial No.:	10/808,913	Art Unit:	2416
Filing Date:	03/25/2004		

Title: Providing Internet Users with Presence Information About Telephone Lines in the Public Switched Telephone Network

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office on February 25, 2008.

Charles L. Warren, Reg. No. 27,407

COMMISSIONER FOR PATENTS
Mail Stop: Pre-Appeal Brief
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Alexandria, VA 22313-1450

SIR:

Pre-Appeal Brief Request for Review

Applicant requests review of the final rejection and advisory action of this application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal and within the time giving applicant until February 25, 2009 to file a timely response to the final Office Action. Thus, this response is timely filed. The review is requested for the reasons stated on the attached sheets (not more than 5 pages).

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Remarks

Applicant requests Pre-Appeal Brief Review of the final Office Action and Advisory Action for reasons stated below. Claims 1-20 are pending.

The current rejection is improper based on an error of fact and/or the omission in the applied prior art to disclose an element of one or more claims.

Applicant's arguments presented below focus on certain patentable differences between the invention as claimed and the applied reference. However, it is not to be inferred that the failure to argue all differences between the claimed subject matter and the applied reference constitutes acceptance of assertions made in the Office Action of alleged similarities between elements of the claimed subject matter and the applied reference.

Claim Rejection - 35 U.S.C. §103:

Claims 1, 4, 8-9, 13-15, 19 and 20 were rejected under 35 U.S.C. §103 as being unpatentable over Michael (U.S. 2004/0170263) in view of Sun (US 2005/0190744).

Claim 1:

In the determining step of method claim 1, the presence server determines a presence state of a telephone line of a PSTN subscriber based on the call event information where the call event information defines both when the telephone line is available and is not available to receive a call. Only Michael is relied upon a disclosing this step, and hence Sun need not be discussed relative to this limitation. Michael does not teach this limitation as explained below.

The prior art described in the Background of the Invention section of Michael describes that prior presence status systems require that users had to be logged into the presence monitoring system in order for the user's status to be determined. The improvement of Michael is directed to a presence server which can determine presence information about a calling party in the

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telephone system where the calling party is not logged into the presence system; see Michael paragraphs 3 and 7. In Michael, a telephone routing system maintains a list of watched users and provides an indication to the presence database manager when a phone call originates from a user that is not logged into the monitoring system; see paragraph 8.

One of ordinary skill the art would understand the teachings of Michael are directed to determining when a user (who is not logged into the monitoring system), being 'watched' by another party via a presence database manager, is not available to receive a call due to the watched user being in an ongoing call originated by the watched user. That is, the presence database manager is provided information when the telephone line of the watched user originates a call. The presence database manager can inform the party watching the user that the user is not available to receive a call when the presence database manager has collected information of a call origination by the user. However, information that the watched user is unavailable to receive a call is only known to the presence database manager if the watched user's line has originated a call. That is, in accord with the teachings of Michael, the presence database manager only collects information about a watched user's status via sensing a call origination on the user's telephone line.

One of ordinary skill in the art would understand based on the teachings of Michael that call event information associated with the telephone line of such a watched user is not available to the presence database manager when the watched user has not originated a call. That is, the status for such a user's telephone line who has not originated a call would not be known to the presence server of Michael since the telephone routing system in Michael relies upon the calling party identification (CID) associated with a user originating a telephone call in order to obtain presence information for users not logged in to the LAN system; see FIG. 4, step 410. One of ordinary skill in the art will understand that CID information will not be present for a user in Michael except when the subject user originates a call during which the CID of that user is made available as part of the call setup process.

A user cannot logically be determined to be available to receive a call merely based on the lack of presence information such as provided by Michael when a user is not currently engaged in an

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originated call. The presence database manager of Michael does not know the state of a user's line not logged in to the LAN system when that user has not originated a call, and hence cannot provide the party watching this line with information as to whether this line can receive a call. A telephone connected to a user's line, that has not originated a call, may or may not be available to receive a call. For example, such a user may have intentionally left his telephone off-hook in order not to be disturbed; or may be in the process of dialing a number prior to call completion; or the telephone may be disconnected from the line; or the telephone may be inoperable and incapable of making or receiving calls. None of these conditions which will prevent the receipt of an incoming call are sensed by the presence database manager. Therefore, Michael does not teach the limitation of claim 1 in which the call event information defines **both** when the telephone line **is available and is not available to receive a call.**

This subject limitation is alleged in the final Office Action to be taught by Michael relying on:

> "FIG. 2.206; paragraph 34; paragraph 36 which indicates a call can be intercepted and rerouted based upon presence information and other rules"

Applicant incorporates by reference the detailed explanation of each of these three portions of Michael presented in applicant's communication of January 6, 2009. None of these portions teaches the subject limitation, and are consistent with the operation of Michael as explained above.

In the Advisory Action, in response to applicant's assertion that Michael does not teach the limitation of "determining both the telephone line is available and is not available to receive a call", it is stated that paragraph 36 teaches a call may be rerouted to another receiver based upon rules or other stimuli. The examiner provides an example of such a rule wherein the user has left the office, i.e. is unavailable at that destination, so that the call should be routed to his cell phone.

It is respectfully submitted the ability to automatically reroute a call is not relevant with regard to the subject limitation. The limitation requires a determination by a presence server of a presence state of the PSTN subscriber associated with the telephone line based on caller event information where the caller that information defines both when **the telephone line is and is not available to**

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receive a call. Applying an automatic rerouting instruction does not determine whether the destination telephone line itself is or is not available to receive the call. For example, a calling party who is rerouted to an alternate telephone number based on such a rule will be rerouted regardless of the ability of the called telephone line to receive a call, i.e. regardless of whether the phone connected to the line is operative or not.

It is also stated in the Advisory Action that Michael may not detect availability based on a condition such as accidental off-hook, but the claims as written do not require such a detection. It is true that claim 1 does not recite an accidental off-hook. Applicant has provided a series of examples to merely illustrate the limitation expressly claimed in claim 1. It is clear that claim 1 expressly requires the presence server to determine the presence state of the PSTN subscriber telephone line based on call event information which defines **both when the telephone line is available and is not available to receive a call.**

It is conceded in the Advisory Action that Michael does not detect availability such as caused by an accidental off-hook. Applicant agrees. It is also true that Michael does not detect availability to receive a call, but merely uses CID associated with the subject telephone line to detect the call origination from the line. This does not satisfy the subject limitation of claim 1.

For all the reasons explained above, it is clear that Michael does not teach the subject limitation of claim 1. Therefore the rejection of claim 1 under 35 USC 103 fails to state a prima facie ground in support of the rejection. Withdrawal of the rejection of claim 1 is believed to be proper and is respectfully requested.
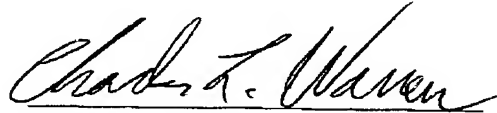
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Claim 14:

Independent method claim 14 is allowable for similar reasons explained above with regard to claim 1.

If a telephone conference would be of assistance in advancing the prosecution of this application, feel free to call applicant's attorney.

Respectfully submitted,

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Dated: February 25, 2009

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